

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

OLIVIA Y., et al.

PLAINTIFFS

v.

CIVIL ACTION NO. 3:04CV251LN

HALEY BARBOUR, as Governor of the State of Mississippi, et al.

DEFENDANTS

**PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' EXHIBIT 1 AND TO PLACE  
UNDER SEAL**

Defendants' Exhibit "1" [sic] to the Response to Motion for Class Certification is a purported summary of facts ostensibly compiled by Defendants' counsel from the named plaintiffs' DHS case records. Plaintiffs move this Court to strike the Exhibit as inadmissible, irrelevant and improper, and to place the Exhibit under seal. Plaintiffs request that at the minimum, Exhibit 1 be placed under seal, as it reveals confidential individually-identifying information about the Named Plaintiffs of the type covered by this Court's Confidentiality Order dated August 5, 2004. (Attached as Ex. A.).

Defendants' Exhibit 1 is an unsigned document of unknown origin. Therefore, it is inadmissible as hearsay and should not be considered by the Court. *See* F.R.E. 802. Defendants' Exhibit 1 is also irrelevant to the Court's consideration of Plaintiffs' Motion for Class Certification. Defendants do not even cite to the Exhibit in their Response, beyond vaguely "refer[ring] the Court to the Exhibits [sic]," because "[t]he difference in the facts stated in the Complaint and those prepared directly from the records are dramatically different." This is a blatantly improper attempt to argue the merits of Plaintiffs' claims. The Supreme Court has

made it clear that when considering class certification under Rule 23, courts must accept the substantive allegations of the complaint as true. *See Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 178 (1974). For all the above reasons, Exhibit 1 should be stricken.

Regardless of whether the Court does strike Exhibit 1, Plaintiffs also move the Court to place the Exhibit under seal, as it reveals in a publicly docketed document detailed information concerning Named Plaintiffs, including the current street addresses and locations of their foster homes, their dates of birth, the names of their schools, the names and addresses of current and former foster parents, and the names of family members. Paragraph 2 of the Confidentiality Order unequivocally states,

Any individually-identifying information ... regarding any plaintiff child, such as the child's family members, foster family members, and persons included in any case files as the source of information concerning the child – including but not limited to these persons' names, addresses, telephone numbers, social security numbers, dates of birth, and other individual information likely to enable a reasonable member of the general public to ascertain their identities – is hereby designated to be confidential.

Plaintiffs' counsel sought the consent of Defendants' counsel to move this Court jointly to place the document under seal as Defendants had previously agreed such information was confidential when they signed the confidentiality consent Order, but were rebuffed. *See* Counsel's correspondence at Ex. C.

RESPECTFULLY SUBMITTED, this the 31st day of January, 2005.

s/ Melody McAnally  
W. Wayne Drinkwater, Jr. (MBN 6193)  
Melody McAnally (MBN 101236)  
BRADLEY ARANT ROSE & WHITE LLP  
188 East Capital Street, Suite 450  
Jackson, MS 39201  
(601) 948-8000

Stephen H. Leech (MBN 1173)  
850 East River Place, Suite 300

Jackson, MS 39202  
(601) 355-4013

Marcia Robinson Lowry (MBN 43991 *pro hac vice*)  
Eric E. Thompson (MBN 43993 *pro hac vice*)  
Shirim Nothenberg (MBN 43990 *pro hac vice*)  
Corene Kendrick (MBN 43989 *pro hac vice*)  
CHILDREN'S RIGHTS  
404 Park Avenue South  
New York, NY 10016  
(212) 683-2210

John Lang (MBN 43987 *pro hac vice*)  
Christian Carbone (MBN 43986 *pro hac vice*)  
Eric Manne (MBN 43988 *pro hac vice*)  
LOEB & LOEB LLP  
345 Park Ave.  
New York, NY 10154  
(212) 407-4000

PLAINTIFFS' COUNSEL

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2005, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

NONE

and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants:

|  |  |
|--|--|
| <p>Betty A. Mallett, Esq.<br/>McGlinchey Stafford, PLLC<br/>200 South Lamar Street, Suite 1100<br/>Jackson, MS 39201</p> <p>Harold E. Pizzetta, III, Esq.<br/>Assistant Attorney General<br/>General Civil Division<br/>Carroll Gartin Justice Building<br/>430 High Street<br/>Jackson, MS 39201</p> <p><i>Attorneys for Defendants</i></p> |  |
|--|--|

s/ Melody McAnally